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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,894	10/26/2001	John Erik Lindholm	NVIDP011A/P000094	7963

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EXAMINER

HAVAN, THU THAO

ART UNIT PAPER NUMBER

2672

DATE MAILED: 02/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/032,894

Applicant(s)

LINDHOLM ET AL.

Examiner

Thu-Thao Havan

Art Unit

2672

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on pre-lim. on 10/26/01.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Double Patenting

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims **24-41** are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-23 of prior U.S. Patent No. 6,417,851. This is a double patenting rejection.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

A.) Re claims **24 and 34**, claim 1 of patent number 6,417,851 teaches claims 24 and 34 of the present application (col. 34, line 53 to col. 35, line 16). Claims 24 and 34 of the application recite the scope of invention of claim 1 in the patent number 6,417,851.

B.) Re claim **25**, claim 4 of patent number 6,417,851 claims all the limitations of claim 25 of the present application (col. 35, lines 24-26).

C.) Re claim **26**, claim 7 of patent number 6,417,851 claims all the limitations of claim 26 of the present application (col. 35, lines 35-38).

D.) Re claim **27**, claim 9 of patent number 6,417,851 claims all the limitations of claim 27 of the present application (col. 35, lines 43-45).

E.) Re claim **28**, claim 11 of patent number 6,417,851 claims all the limitations of claim 28 of the present application (col. 35, lines 49-51).

F.) Re claim **29**, claim 12 of patent number 6,417,851 claims all the limitations of claim 29 of the present application (col. 35, lines 53-55).

G.) Re claims **30 and 35**, claim 14 of patent number 6,417,851 claims all the limitations of claims 30 and 35 of the present application (col. 35, line 61 to col. 36, line 27).

H.) Re claim **31**, claim 14 of patent number 6,417,851 claims all the limitations of claim 31 of the present application (col. 36, lines 25-27).

I.) Re claim **32**, claim 8 of patent number 6,417,851 teach claim 32 of the present application (col. 35, lines 39-41).

J.) Re claim **33**, claim 10 of patent number 6,417,851 teach claim 33 of the present application (col. 35, lines 46-48).

K.) Re claim **36**, claim 16 of patent number 6,417,851 teach claim 36 of the present application (col. 37, lines 3-14).

L.) Re claim **37**, claim 17 of patent number 6,417,851 teach claim 37 of the present application (col. 37, lines 15-16).

M.) Re claim **38**, claim 18 of patent number 6,417,851 teach claim 38 of the present application (col. 37, lines 17-18).

N.) Re claim **39**, claim 19 of patent number 6,417,851 teach claim 39 of the present application (col. 37, lines 19-21).

O.) Re claims **40 and 41**, claim 20 of patent number 6,417,851 teach claims 40 and 41 of the present application (col. 37, line 22 to col. 38, line 14).

Inquiries

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu-Thao Havan whose telephone number is (703) 308-7062. The examiner can normally be reached on Monday to Thursday from 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Razavi can be reached on (703) 305-4713.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9314 (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Art Unit: 2672

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

Thu-Thao Havan
Art Unit: 2672
February 4, 2003



MICHAEL RAZAVI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600